REMARKS

This response and the enclosed RCE are offered in reply to the office action of April 10, 2008. A petition and fee for a two month time extension are enclosed.

In paragraph 1 of the office action, the examiner requests that non-elected claims 47-55 and 79-87 be canceled. In reply, Applicant has canceled claims 47-55 and 79-87. Applicant reseerves the right to prosecute canceled claims 47-55 and 79-87 at a date by way of divisional application or other appropriate means.

In paragraph 3 of the office action, claims 1, 32-40, 42-46, 56-72, 74-78, and 88-94 are rejected under 35 USC 112, second paragraph as indefinite. In particular, claims 1 and 63 are rejected as indefinite with respect to certain structural relationships of elements as set forth in paragraph 4 of the office action.

Applicants have amended indpendent claims 1 and 63 in a manner that claims 1, 32-40, 42-46, 56-72, 74-78, and 88-94 are believed to overcome the Section 112 rejection. Reconsideration of the Section 112 rejection is requested.

These to claims 1 and 63 and Applicant's Figures 4-5 were discussed with the examiner in a telepone interview with the undersigned on August 5, 2008, during which the undersigned proposed reciting in these claims a one-piece shaped sheet metal part having a fluid supply channel opening and a fluid discharge channel opening and connected to a contact plate of a fuel cell unit by an electrically conductive metallic connection to overcome the Section 112 rejection as well as the cited prior art which does not disclose such a one-piece shaped sheet metal part. The examiner indicated such amendments would raise new issues. As a result, Applicant files the enclosed RCE to have the above amendments considered.

In paragraphs 5-6 of the office action, claims 1, 32-40, 42-46, 56-72, 74-78, and 88-94 are rejected on the ground of obviousness-type double patenting in view of claims 1-19 and 32-36 of US Patent 6,670,068.

Applicant encloses a new Terminal Disclaimer and associated fee believed to overcome the obviousness-type double patenting rejection. Reconsideration of the obviousness-type double patenting rejection is requested.

In paragraph 8 of the office action, claims 1, 32-36, 38-40, 42-46, 56, 58-68, 70-72, 74-78, 88, and 90-94 are rejected under 35 USC 102(b) as anticipated by US 4,242,099. The examiner cites U.S. Patent No. 4,942,099 as disclosing metal members 42 and 43 as being shaped metal members.

Pending independent claims 1 and 63 and those pending claims depending therefrom are believed to distinguish over US 4,942,099 . In particular, U.S. patent No. 4,242,099 (Isobe et al.) does not disclose a one-piece shaped sheet metal part which is provided with a fluid supply channel opening and a fluid discharge channel opening and which is connected to a contact plate of a fuel cell unit by an electrically conductive metallic connection. According to page 2, last paragraph of the present specification, a shaped sheet metal part is produced from an essentially flat sheet metal blank by means of one or more shaping processes, in particular, by means of embossing and/or deep drawing. Such a shaped sheet metal part is structurally distinguished from other shaped metal parts which are produced from solid metal plates by way of milling or erosion. A fluid guiding element comprising a one-piece shaped sheet metal part is not disclosed as a structural feature of fuel cell unit of the '099 patent.

Further, each of the ring-shaped metal members 42, 43 disclosed in the '099 patent comprises only a single fluid opening. Thus, these ring-shaped metal members 42, 43 are not provided with a fluid supply channel opening and with a fluid discharge channel opening as set forth in pending independent claims 1 and 63.

Moreover, with respect to pending claim 63, the '099 patent does not disclose a one-piece shaped sheet metal part which is provided with a fluid supply channel opening, with a fluid discharge channel opening, and with a contact element opening for the passage of contact elements arranged on a contact plate of an adjacent fuel cell unit to the cathode-anode-electrolyte unit of the fuel cell unit.

Applicant thus requests reconsideration of the Section 102(b) rejection of claims 1, 32-36, 38-40, 42-46, 56, 58-68, 70-72, 74-78, 88, and 90-94 based on US 4,242,099.

In paragraph 9 of the office action, claims 1 and 63 are rejected under 35 USC 102(a) as anticipated by WO 99/54131.

Pending claims 1 and 63 and those claims depending therefrom are believed to distinguish over WO 99/54131, which expressly discloses separator plates (11) which are separated from each other by electrically insulating layers made of glass ceramic (layer 30) and made of glass or of a mixture of glass and glass ceramic (sealing layer 40).

Thus, the separator plates (11) of WO 99/54131 clearly fail to be connected to each other by an electrically conductive metallic connection. Further, these separator plates (11) are not one-piece shaped sheet metal parts.

Also, with respect to pending claim 63, WO 99/54131 does not disclose a one-piece shaped sheet metal part which is provided with a fluid supply channel opening, with a fluid discharge channel opening, and with a contact element opening for the passage of contact elements arranged on a contact plate of an adjacent fuel cell unit to the cathode-anode-electrolyte unit of the fuel cell unit.

Applicant thus requests reconsideration of the Section 102(a) rejection of claims 1 and 63 based on WO 99/54131.

In paragraph 10 of the office action, claims 1 and 63 are rejected under 35 USC 102(a) as anticipated by WO 98/35398.

Pending claims 1 and 63 and those pending claims depending therefrom are believed to distinguish over WO 98/35398. This reference fails to disclose a one-piece shaped sheet metal part which is provided with a fluid supply channel opening and a fluid discharge channel opening forming a part of a fluid discharge channel which extends through the fuel cell unit parallel to a stacking direction and which does not pass through the electrolyte of the cathodeanode-electrolyte unit.

In contrast, as can be clearly seen from Fig. 2 of WO 98/35398, a fluid containing H_2O is discharged in a direction perpendicular to the stacking direction through the spacings between the fuel cell units which are stacked upon each other along the stacking direction. Therefore, the plates (1) of WO 98/35398 do not comprise a fluid discharge channel opening and certainly do not comprise a fluid discharge channel opening forming a part of a fluid discharge channel which extends through the fuel cell unit parallel to a stacking direction.

Also, with respect to pending claim 63, WO 98/35398 does not disclose a one-piece shaped sheet metal part which is provided with a fluid supply channel opening, with a fluid discharge channel opening, and with a contact element opening for the passage of contact elements arranged on a contact plate of an adjacent fuel cell unit to the cathode-anode-electrolyte unit of the fuel cell unit.

Applicant thus requests reconsideration of the Section 102(a) rejection of claims 1 and 63 based on WO 98/35398.

In paragraph 13 of the office action, claims 37 and 69 are rejected under 35 USC 103(a) as obvious in view of US 4,242,099 taken with US publication 2002/0024185.

The gross deficiencies of the '099 patent are discussed above. The '185 reference does not make up for these deficencies and instead teaches that mica seals are unable to to provide an adequate seal (column 1, lines 50-53).

Applicant thus requests reconsideration of the Section 103(a) rejection of claims 37 and 69 based on this combination of references.

In paragraph 14 of the office action, claims 37 and 69 are rejected under 35 USC 103(a) as obvious in view of US 4,242,099 taken with US 6,106,967.

The gross deficiencies of the '099 patent are discussed above. The '967 patent does not make up for these deficencies and instead teaches that mica seals are unable to provide an adequate seal (column 1, lines 50-53).

Applicant thus requests reconsideration of the Section 103(a) rejection of claims 37 and 69 based on this combination of references.

In paragraph 15 of the office action, claims 57 and 89 are rejected under 35 USC 103(a) as obvious in view of US 4,242,099 taken with AAPA.

The gross deficiencies of the '099 patent are discussed above. The AAPA does not make up for these deficencies such that claims 57 and 89 are not rendered obvious.

Applicant thus requests reconsideration of the Section 103(a) rejection of claims 57 and 89 based on this combination of references.

Applicant believes the pending claims are in condition for allowance, and action to that end is requested.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service under 37 CFR 1.8 as first class mail in an envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 28, 2008.

Edward J. Timmer